September 2016 Proposed Supplement not Supplant Regulation: Overview and Impact

- This is a well-intended rule, but it will not help, and in fact could hurt, the students it is intended to benefit.

- Under the rule, districts must meet one of four federal benchmarks for state/local spending in Title I schools:
    1. <u>Distribute almost all of the money available to the LEA through a weighted student funding formula</u>, where educationally disadvantaged students generate more money for their schools.
    2. <u>Distribute almost all of the money available to the LEA by allocating a specific dollar amount to each Title I school based on district-wide salary averages plus a non-personnel resources calculation</u>, where Title I schools receive the sum of:
        - The districtwide salary average for each category of personnel in the school multiplied by the number of personnel in the school in each category, <u>plus</u>
        - The average districtwide per-pupil expenditure for non-personnel resources multiplied by the number of students in the school.
    3. <u>Distribute almost all of the money available to the LEA through an SEA developed funds-based compliance test</u> that is as rigorous as 1 or 2 above, and is peer reviewed and approved by ED.
    4. <u>Equalize per-pupil spending in Title I and non-Title I schools</u>. LEAs automatically comply with SNS if they spend an amount of state/local funds per pupil in Title I schools that is equal to or greater than the average per-pupil amount in non-Title I schools. LEAs that meet this test (called a special rule in the regulation) do not need to satisfy any of the three tests above.

- SEAs are responsible for verifying LEAs meet these benchmarks, and for enforcing compliance if they do not.

- The federal benchmarks are based only on dollars spent in a school, with no consideration of the quality, type, or amount of resources provided to schools.

- Any local approach to equity that does not meet one of these four benchmarks will not comply, even if they result in more resources for Title I schools. For example, hiring extra teachers, adding counselors or other staff, or adding special programming, might not, by itself, be enough to satisfy the complicated federal calculations.

- Despite research that shows stability is vitally important, particularly in low-income schools, this rule might force districts to make last minute changes to teacher or other resource assignments to satisfy the federal benchmarks. This is because district spending in a given school depends on enrollment, staffing, and school-level decisions that may not be settled until close to, or even after, the start of the school year. As a result, districts might have to move resources around to meet federal benchmarks. Districts might also have to override school-based decisions, particularly hiring decisions, if a school's choices put the numbers out of balance.

- The rule could make school finance decisions <u>less</u> transparent because compliance will be demonstrated through complicated spreadsheets. This makes it harder for communities to weigh in on school spending choices, and undermines a key principal of ESSA.

- In addition, the rule fails to address important day-to-day aspects of school finance, including the rules districts must follow under local levy and/or bond obligations, as well as the role of certain central-level costs like health care and other benefits for its employees, school construction and other capital expenses, maintenance, transportation, pension obligations, and debt service costs. It is unclear how districts can comply with, or SEAs can enforce, the proposed rule in light of these finance realities because they are not addressed.

- Equity in finance is too important to get wrong. This rule needs to be overhauled so districts and SEAs can get it right.

Supplement not Supplant (SNS) Background

- CCSSO is committed to supporting equitable educational opportunities for all students. We are concerned, however, that USED's proposed regulation on Title I's "supplement not supplant" (SNS) requirement is not consistent with the spirit of the Every Student Succeeds Act (ESSA) and could hurt the students it aims to help.
- SNS is a long-standing rule that requires that Title I funds not be used to replace the state and local funds an LEA would have spent in a Title I school if it did not participate in Title I.
- ESSA retained the SNS rule, but changed how compliance is tested.
    - Currently, ED tests compliance by applying three presumptions to each individual cost charged to Title I.
    - ESSA prohibits an individual cost test, and instead requires an LEA to show that the methodology used to allocate state and local funds to Title I schools provides each school with all of the state and local funds it would have received if it did not participate in Title I.
- ESSA prohibits ED from prescribing the specific methodology an LEA uses to allocate state and local funds. ESSA also contains a "rule of construction" stating nothing in Title I shall be construed to mandate equalized spending per-pupil for a State, LEA, or school.

<u>Specific Concerns with Proposed Regulation</u>

- The rule measures equity only in terms of spending thresholds defined by ED. Other state or local approaches to equity that do not comply with ED's prescribed spending thresholds will not comply (for example, racial or economic integration programs, or programs that provide low-income schools more staff, programs, or services will not comply if they do not meet the rule's spending thresholds).

- Even in LEAs that distribute FTEs consistently across schools, if the underlying salaries at a given Title I school do not meet districtwide averages the LEA will be out of compliance with the rule. (FTE allocation methods are the most common way to allocate school-level staff and the funding that supports that staff.)

- Under the weighted student funding option, it is not clear whether weights for factors other than educational disadvantage are permitted (such as pre-K, magnet, gifted and talented, or CTE student status).

- The rule does not take into account programs or costs where funding is unpredictable from year-to-year (for example, student course choice programs, merit pay programs for teachers, programs that reimburse students for certain expenses, emergency repairs, etc.).

- The requirement to distribute "**almost all**" state and local funds to schools is unclear. Few LEAs (if any) flow "almost all" funds directly to schools because of certain LEA-level obligations (see bullet below).

- The proposed rule either does not address, or is unclear about, certain kinds of LEA-level spending, some of which are subject to legal obligations that could conflict with the rule such as:
    - Spending supported by local levies and bond obligations (which typically fund specific costs for a certain period of time)
    - Health care and other benefits for LEA employees (such non-pension retirement plans, leave benefits, other insurance benefits, etc.)
    - Capital expenditures, including construction of new school buildings
    - Transportation costs, including fleet costs

- Debt service
- Pension obligations
- Ongoing maintenance and/or emergency repair and replacement costs
- Substitute teacher costs
- Lease agreements
- Utility costs
- Food service costs
- Judgments against the LEA

- The rule is silent on what enforcement is required.

<u>Practical Implications of Proposed SNS Compliance Standard</u>

Implications for LEAs:

- Because compliance is based on spending thresholds, LEAs will have to centrally manage all decisions that affect costs. **Importantly, this means that school-based hiring and other programming decisions might be overridden by the LEA if a school's choices put the numbers out of balance.** The proposed rule's negative consequences could include:

  - <u>Last minute shuffling of staff or other resources to meet federal compliance requirements</u>, because schools often cannot reliably predict enrollment, programming, or staffing levels in advance.
  - <u>A "one-size fits all" approach to programming in schools</u> because uniformity makes compliance with the federal spending benchmarks easier to meet. This could negatively affect *specialized schools* such as CTE, IB, dual-immersion, magnet, or performing arts schools, as well as *specialized programs* within schools where costs may vary from traditional programs.
  - <u>Cutting programs or initiatives that increase student choice and/or have inherent cost variability</u> because their lack of predictability makes compliance with the proposed rule difficult. This could include student course choice and dual enrollment programs, merit pay programs for teachers, or programs that reimburse students for certain costs.
  - <u>Undermining support for future levies or bonds</u>. Because the rule mandates how funds must be allocated to schools, it may erode support for local levies or bond initiatives which are an important source of revenue in many districts.

- The lack of clarity on how to handle costs traditionally financed at the LEA-level makes it hard for districts to know how comply with the rule for costs such as:
  - <u>Health care and other benefits</u> (How should these costs be allocated to schools? If a teacher is "more expensive" because he or she participates in a family health insurance plan, rather than an individual insurance plan, how should compliance be determined?)
  - <u>Transportation costs, including fleet costs</u> (How should these costs be allocated to schools? What if transportation costs are higher in non-Title I schools because of the geographic makeup of the district?)
  - <u>Building new/major additions to non-Title I schools</u> (New schools or major additions are typically based on long-range planning reflected in a capital improvement plan. How would spending on these costs in non-Title I schools impact compliance?)

  - Repair or maintenance for non-Title I buildings (If physical plants for non-Title I schools are bigger or older, and/or if something needs to be remediated in one or more non-Title I schools, such as lead pipes, what does this mean for compliance if it results in higher costs in non-Title I schools?)
  - Local obligations under levies or bonds (Revenue raised via levy or bond typically must be spent in strict accordance with levy or bond terms – what does this mean in terms of compliance with the rule?)

Implications for SEAs:

- SEAs are the primary enforcers of all ESSA rules – including SNS. This presumably means SEAs will be responsible for requiring LEAs that are not complying with SNS to change the way they fund their schools (along with possible repayment or withholding of Title I funds).

- The rule does not clearly address a wide range of issues (as noted above), so SEAs will have to navigate ambiguities. The rule puts state chiefs squarely in the middle of local resource decisions and local/state legal obligations that could possibly conflict with the proposed rule.
  - For example, the SEA will have to tell the district what to do to comply with the law where there is conflict between the proposed rule and:
    - Local levy or bond obligations,
    - Collective bargaining agreements, or
    - State funding formulas.

- The rule could be highly charged politically. This could make it harder to get the public, governors, and the public to support ESSA. The rule could prompt legal challenges, or even calls to pull out of Title I entirely.